Black Hawk Co. Board of Health / AFSCME #679 CEO 719 SECTOR 2

BEFORE THE IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Arbitration between	)	**Hearing Date: June 21, 2005**
BLACK HAWK COUNTY, IOWA	)	
Employer	)	**Marvin Hill, Jr., Neutral**
and	)	
BOARD OD HEALTH EMPLOYEES, UNIT VII, AFSCME 679	)	**Hearing Location: Waterloo, Iowa**
Union.	)	

APPEARANCES

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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

Black Hawk County is the fourth largest county in the State of Iowa (*infra* at 7). Black Hawk County, as the "Employer," has eight separate collective bargaining agreement covering members of three different unions in addition to non-represented employees. Employees of the Public Health Department total 96 in number and range in base pay from 9.44/hour to 25.07/hour.

The parties are currently at impasse regarding a July 1, 2005, through June 30, 2006, successor collective bargaining agreement. Besides numerous bargaining sessions, mediation sessions were held on February 22, 2005, March 3, 2005, and June 21, 2005 (by the undersigned) with no settlement reached.

This matter is now before the undersigned Arbitrator for final and binding resolution established under the Iowa Code, Chapter 20 (2005). While the matter commenced as a fact finding, after mediation efforts, the parties elected to bypass the fact finding stage and move directly to arbitration. The procedure the parties agreed to was regular "traditional-type" arbitration, rather than final offer arbitration.

In the course of the hearing, both parties submitted their evidence and were given full opportunity to introduce evidence and exhibits in support of their positions. In this proceeding the majority of evidence was submitted *via* a narrative by the advocate. The parties did not submit post-hearing briefs; rather, the parties entered oral arguments at the end of the hearing.

II. ISSUES FOR RESOLUTION

Three issues remained unresolved: Wages, Health Insurance, and Waterloo Schools Nursing Addendum. All other issues have been resolved.[1]

III. ANALYSIS AND DISCUSSION

A. The Statute

Section 2.22 (9) (Binding Arbitration) of the Iowa statute lists the following criteria for interest arbitrators to apply:

> 9. The panel of Arbitrators shall consider, in addition to any other relevant factors, the following factors:
>
> a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
>
> b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
>
> c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
>
> d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations

It is acknowledged by all interested parties, as well as the Iowa PERB, that the above criteria should be applied by a fact-finder when making a recommendation for a successor collective bargaining agreement.

In addition, Chapter 20, Section 17(6) of the Act provides:

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[1] On April 11, 2005, Black Hawk County filed a petition pursuant to PERB rules, 621-6.3(20) and 621-10.1(17A,20) regarding a dispute whether certain proposals offered by AFSCME, Local 679, Iowa Council 61, Unit #8 at factfinding constitute mandatory subjects of bargaining. On May 5. 2005, PERB determined that the following issues were mandatory/non-mandatory subjects of bargaining: Article III, Employer Rights (mandatory); Article V, Grievance Procedure (mandatory); Article VI, Seniority (non-mandatory); Article VII, Leave of Absence (Section 7.10, non-mandatory), (Section 7.11, mandatory); Article XV, Milage (mandatory); Article XX, Longevity (mandatory); Proposal 7 (Reimbursement for Safety Shoes)(mandatory).

No collective bargaining agreement or arbitrator's decision shall be valid or enforceable if its implication would be inconsistent with any statutory limitation on the public employer's funds, spending or budget, would substantially impair or limit the performance of any statutory duty of public employer. A collective bargaining agreement or arbitrator's award may provide for benefits conditional upon specific funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtainable or if a lesser amount is obtained.

* * * *

B. Background: Focus of the Interest Neutral in Formulating Recommendations and/or Interest Awards

What should be the focus of the interest neutral when formulating a fact-finding or arbitration award? Should the award reflect the evidence-record facts or should it reflect the position the parties would have reached had they been permitted to engage in economic warfare? Likewise, where fact-finding is mandated, should the fact-finder issue recommendations that will settle the dispute (i.e., a recommendation that both sides can live with and avoid arbitration) or, alternatively, should recommendations be drafted based only on the so-called hard facts (assuming, of course, that there are hard facts to be found)?

Where both parties have come to the bargaining and arbitration table with extreme positions, one arbitrator found that the proper focus is to formulate an award based on "a position which both parties would have come to had they been able to reach an agreement themselves."[2] In another case, the arbitrator rejected the fact-finder's "recommendations based on compromise in an attempt to gain the parties' support for an intermediate solution."[3] In the arbitrator's words, "this is a legitimate strategy for a Fact Finder, but not for an Arbitrator."[4] R. Theodore Clark of Seyfarth Shaw, Chicago, Illinois, has argued that the interest arbitrator should not award more than the employees

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[2] *County of Blue Earth v. Law Enforcement Labor Serv., Inc.*, 90 LA 718, 719 (1988) (Rutrick, Arb.); *see also* 60 *City of Clinton v. Clinton Firefighters Ass'n, Local 9*, 72 LA 190 (1979) (Winton, Arb.) (the fact-finder declared "consideration was given to what the parties might have agreed to if negotiations had continued to a conclusion. In the final analysis, however, the Fact Finder must recommend what he considers to be RIGHT in this City at this time. . . ." *Id.* at 196.).

[3] *City of Blaine v. Minnesota Teamsters Union, Local 320*, 70 LA 549, 557 (1988) (Perretti, Arb.).

[4] *Id.*

would have been able to obtain if they had the right to strike and management had the right to take a strike.[5]

Arbitrators and advocates are unsure whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, "what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result."[6] **While I do not advocate that interest neutrals issue decisions that surprise both parties (i.e., decisions outside the "range of expectations" or "outliers"), there is something to be said for attempting to determine whether the parties would have found themselves with the strike weapon at their disposal.** At times this would favor a large union and at other times the employer. **The job of an interest neutral, however, is not to equalize bargaining power, or to do "what is right" or act like a "circuit rider," dispensing his own notion of economic justice but, rather, to render an award applying the statutory criteria. At the same time, if the process is to work, "it must not yield substantially different results than could be obtained by the parties through bargaining."**[7] In this regard Arbitrator Harvey Nathan, in a 1988 arbitration under the Illinois statute, outlined the better view of an arbitrator's function as follows:

> [I]nterest arbitration is essentially a conservative process. While, obviously, value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it the function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to

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[5] R.T. Clark, Jr., Interest Arbitration: Can the Public Sector Afford It? Developing Limitations on the Process: II. A Management Perspective, in Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators (J.L. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982). Clark referenced another commentator's suggestion that interest neutrals "must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take the strike." *Id.*

See also Des Moines Transit Co. v. Amalgamated Ass'n of Am., Div., 441, 38 LA 666 (1962) (Flagler, Arb.) "It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table." *Id.* at 671.

[6] See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion, in* Arbitration–1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators (B.D. Dennis & G.C. Somers, etd) 159, 186 (BNA Books, 1976).

[7] *Arizona Pub. Serv. Co. v. Int'l Bhd. of Elec. Workers, Local 387*, 63 LA 1189, 1196 (1974) (Platt, Arb.).

[the] parties' particular bargaining history. **The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves.** To do anything less would inhibit collective bargaining.[8]

C. Relevance of Internal vs. External Comparisons

Both parties have advanced arguments with respect to internal and external criteria, with the Administration asserting that internal comparisons should be given more weight than external comparisons. How significant is internal and external comparability as criteria in interest proceedings? In *Elk Grove Village & Metropolitan Alliance of Police (MAP)*(Goldstein, 1996), Chicago Arbitrator Elliott Goldstein noted that "the factor of internal comparability alone required selection of the Village's insurance proposal." Arbitrator Goldstein stressed that arbitrators have "uniformly recognized the need for uniformity in the administration of health insurance benefits." Similarly, in *Will County, Will County Sheriff & AFSCME Council 31* (Fleischli, 1996)(unpublished), Wisconsin Arbitrator George Fleischli observed that when an employer has established and maintained a consistent practice with regard to certain fringe benefits, such a health insurance, it "takes very compelling evidence" in the form of external comparisons to justify a deviation from that past practice.

While recognizing that comparisons are sometimes fraught with problems, and that one should not use comparisons as the single determinant in a dispute (the statute precludes this result), Arbitrator Carlton Snow nevertheless noted the value of relevant comparisons in *City of Harve v. International Association of Firefighters, Local 601*, 76 LA (BNA) 789 (1979), when he stated:

> Comparisons with both other employees and other cities provide a dominant method for resolving wage disputes throughout the nation. As one writer observed, "the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison." As Velben stated, "The aim of the individual is to obtain parity with those with whom he is accustomed to class himself." **Arbitrators have long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's wage proposal.** *Id.* at 791 (citations omitted; emphasis mine).

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[8] *Will County Bd. and Sheriff of Will County v. AFSCME Council 31, Local 2961*, Illinois State Labor Relations Board, (Nathan, Chair., Aug. 17, 1988) (unpublished).

See generally, Hill, Sinicropi and Evenson, Winning Arbitration Advocacy (BNA Books, 1998)(Chapter 9)(discussing the focus of the interest neutral).

Other considerations equal, I agree with those arbitrators who, with rare exceptions, find internal comparability equally or more compelling than external data.

D. Comparative Bench-Mark Jurisdictions

The County uses the "Waint Seven" as the appropriate comparison group, which consists of the eight largest counties in Iowa (the so-called "urban eight"), less Polk county, as recommended by Factfinder Rex H. Wiant. This is the same group used by the County at factfinding and arbitration last year. Moreover, this group was accepted by the neutrals both last year and this year. The comparative counties (and their populations) consist of the following:

County (2000 population)	Largest City
Dubuque (89,143)	Dubuque
Linn (191,701)	Cedar Rapids
Johnson (111,006)	Iowa City
Polk (374,601)	Des Moines
Pottawattamie (87,704)	Council Bluffs
Scott (158,668)	Davenport
Woodbury (103,877)	Sioux City
Black Hawk (128,012)	Waterloo

Polk county was removed by Mr. Waint "because it is significantly larger than all other counties." *Blackhawk County & IBT 238* (CEO 80/Sector 2, 2004) at 4. I agree that Polk County is problematic because of its much larger population and tax base. See, *Black Hawk & PPME, CEO #77* (Benz, 2003) at 10 n.9. [9]

For purposes of this arbitration, the "urban eight" is accepted as the appropriate bench-mark counties.

E. Substantive Issues

1. Wage Proposals

County position: **2.00% ATB + Step Movement** **5.59 total percentage**

Union position: **3.00% ATB + Step Movement** **6.87 total percentage**

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[9] Given its geographical proximity to Black Hawk and similar bargaining-unit job classifications, it is unclear why Clinton County was excluded from a comparative analysis. See the analysis of Arbitrator Sterling Benz in *Black Hawk & PPME* (2003), an interest arbitration decision reported in 2003.

This Unit has 96 employees divided into eight of 16 classes on the salary schedule and each class of employees has a 9-11 step salary schedule with 2.5% steps. Moreover, 53 of 96 employees (55.2%) have step movement this year in addition to the across-the board increase. This is more than any other unit.

a. Internal Criteria. The Administration advances a compelling argument regarding the relevance of internal comparables.

In a case such as this, where the County deals with eight unions, internal comparability is of paramount importance. From the standpoint of both substance and appearance, I believe it is in the public employer's interest to treat its various groups of employees in a similar fashion. Likewise, it is equally important for bargaining unit representatives to maintain their relative wage and benefits *vis-a-vis* brethren unions. More importantly, however, it is obvious that the Iowa Legislature intended third-party neutrals to look first to internal comparability when searching for guidance and making decisions regarding interest arbitration. Indeed, there is no more "similar" public employee than one which is working for the same employers, but represented by a different union.

To this end, the most compelling exhibit is *County Exhibit 5-2*, titled "Bargaining Units – Wage Settlements." In relevant part that exhibit provides:

UNIT	1	2	3	4	5	6	7	8	Non-Bargaining
FY90	0.0	0.0	0.0	4.0	4.0	n/a	n/a	3.5	3.0
FY91	2.5*	2.5	n/a	4.0	4.0	n/a	n/a	4.0	3.0
FY92	3.5	2.0	2.0	4.0	4.0	n/a	n/a	3.0	3.0
FY93	4.0	4.0	4.0	3.0	3.0	n/a	n/a	3.0	3.0
FY94	3.5	3.5	3.5	3.5	3.5	3.5	n/a	3.5	3.5
FY95	4.0	4.0	4.0	4.0	4.0	4.0	n/a	4.0	4.0
FY96	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
FY97	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
FY98	3.5	3.0	0+step	3.5	3.5	3.5	3.5	3.5	5.0
FY99	3.0	2.75	3.0	0+step	2.5/3.0	2.75	2.75	2.75	5.0
FY00	2.5	2.0	3.0	2.75	2.75	2.5	1.5/1.5	2.5	2.5
FY01	3.0	3.0	3.0	3.5	1.5/1.5	3.0	3.0	2.5	3.0
FY02	3.0	3.0	3.0	3.5	3.0	3.0	3.0	3.0	3.0
FY03	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
FY04	3.0	2/2	2.5arb	2/2	2/2	0+step	2/2	3.0	0.0
FY05	2.0	2.0	2.0	2.0	2.0	0+step	2.0	2.0	1.0/2.0
FY06	2.25	2.25	2.5arb	2.25	2.25	3.5**	2.35	NS	1.0-2.5

Unit 1– Clerical 79 employees (PPME); Unit 2 – Nursing 122 employees (PPME); Unit 3– Maintenance 51 employees (PPME); Unit 4 – Roads 32 employees (Teamsters); Unit 5 – Deputies 127 employees (Teamsters); Unit 6 – Attorneys 16 employees (AFSCME); Unit 7 – Conservation 17 employees (AFSCME); Unit 8 – Health 96 employees (AFSCME). Total: 540 unit employees.

* half steps removed from the schedule 7-1-90. Employees moved to next whole step (either 2.5 or 5.0). A step was added for those at the top of the wage scale.

** The county attorney unit #6 is in the last year of a three-year agreement where the first two years were at a wage freeze with step movement allowed. This averaged a 1.17% yearly wage increase. The conservation settlement #7 is in the last of a two-year settlement.

* * *

It is apparent that all seven units that are settled for 2005-06 are at levels well below the Union's three percent proposal.

Moreover, the settlement history shows the eight (8) bargaining units tend to settle at the same or very similar levels. The concept of pattern bargaining was relied upon by last year's fact finder and arbitrator for Unit #5 and, according to the Administration, should be equally applicable this year for Unit #8.

The Administration's position with respect to pattern bargaining is well taken. Borrowing from Arbitrator Harry Graham's analysis, pattern bargaining has been consistently employed by these parties:

> **The history of the current round of negotiations in Balck Hawk County demonstrates that there has occurred pattern bargaining on the matters of wages and insurance.** That is, the other bargaining units with which the County negotiates have accepted the proposal of the County in this proceeding. This is a compelling point in favor of awarding the position of the Employer.

Mr. Graham went on to note:

> In 1994 I was the Factfinder in Fraternal Order of Police-Ohio Labor Council and State of Ohio, Bargaining Unit 1 (Highway Patrol). I observed:
>
> > The concept of pattern bargaining is well established in both the private and public sectors. The Employer and one Union negotiate. The resulting agreement serves as the pattern or benchmark for agreements between the State of Ohio and the other Unions. In this matter, both parties are protected from the phenomenon known as whipsawing. The existence of the OCSEA/AFSCME agreement places a very, very heavy burden upon a union which seeks to deviate from it.
>
> More recently, in June 2004, in IAFF 1267 and City of North Mlmsted, OH (SERB Case No. 03-MED-07-0736), I was if the view that the City:

> [“] . . . **Relies on pattern bargaining. This is, the concept which a deal is struck with one or more groups and is then extended to others.** The City asserts that the pattern of no wage increase in the first year of the agreement (2004) should be extended to the fire fighters. Failure to do so will undermine its bargaining tactic. Should the fire fighters secure a wage increase it will also subject the City to whipsawing . . .” In support of the proposition that pattern bargaining should not be observed the Union cited the recently issued award of Factfinder Bernadette Marczely in IAFF and City of Bay Village (SERB Case No. 03-MED-09-1019, April, 2004). In her report Factfinder Marczely repudiated the concept of pattern bargaining and declined to recommend for FireFighters in Bay Village the same wage increase as had been accepted by other groups of City employees.
>
> I disagree with Factfinder Marczely. Her rationale is flawed. Pattern bargaining developed for a sound reason. Whether advanced by the Union or the Employer, its adoption promotes stability in industrial relations. Both the Employer and the Union are protected from whipsawing. Of course, deviations from the pattern occur. Perfect equality of contract language and compensation is impossible to achieve given the different conditions facing employees and employers. Special circumstances of the employer or group of employees are addressed within the general framework of a pattern settlement. But whether the Union is dealing with multiple employers, or the Employer is dealing with multiple Unions, the central elements of pattern bargaining, e.g., wages, health insurance, are observed. This is as it should be. **The disregard of pattern bargaining enunciated by Factfinder Marcsely is destructive of industrial relations stability which is important to Unions and Employers alike. (Graham at 9; emphasis mine).**

Once again, I reiterate that the concept of pattern bargaining is very, very important (Graham at 9).

* * *

The Health Unit is represented by AFSCME, which executed agreements in other units comparable to what the Administration is offering. I see no justification for an award less than 2.25%, the existing pattern in this county. At the same time, the Administration's two percent offer is low and unsupported by the comparables, both internal and external. As noted, the settlement history shows that the eight bargaining units tend to settle at the same or very similar levels.[10]

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[10] Fortunately for the undersigned, none of this is rocket science, as many neutrals and advocates know. In Black Hawk County, three different neutrals (Factfinder Stone, Factfinder Cox, and Arbitrator Thompson) came up with an across-the-board increase of 2.25% (See, e.g., County Ex. S-7). For obvious reasons, neutrals have ascertained (and explained) a difference between Johnson County (the wealthiest county among the relevant comparables) and Black Hawk County (arguably the poorest county).

The appropriate settlement "number" is 2.25%, consistent with internal analysis.

b. External Comparisons. An analysis of external data reveal the following settlement comparisons:

Dubuque County	Non-Bargaining	ukn
	Except clerical in court house unit	
	Except nurses in county home unit	3.25%
Linn County	Bargaining	3.0%
Johnson County	Non-Bargaining	
	Exempt clerical in Sheriff Unit	2.0%/2.0%
	Exempt clerical in Ambulance Unit	2.0%/2.0%
	Social Workers in Social Services	2.0%/2.0%
Pottawattamie	Non-bargaining	
	Exempt Clerical	1.5%/1.5%
Scott County	Non-Bargaining	3.25%
Woodbury County	Non-Bargaining	2.7%
	Exempt clerical in Court House	2.9%
Black Hawk County	Health Bargaining	NS
	Nurses' Unit	2.25%
	Clerical	2.25%
	Maintenance	2.25%
	Roads	2.25%
	Deputies	2.25%
Average		2.69%

As noted by the Administration, all of the counties with higher wage settlements than Black Hawk County's proposal have significantly lower insurance cost increases and significantly better budgets and can accordingly settle for a higher percentage wage increase than Black Hawk County.

c. Ability-to-Pay Considerations. While the Administration has not advanced an inability-to-pay argument, financial considerations and evaluations are nevertheless appropriate and, indeed, mandated under the statute.

Of special note here is this – Black Hawk County is in the worst financial shape of any county in its comparison group. The County is No. #3 in population but last in the percent of

undersignated/unreserved funds to total ending fund balance. While the state-wide fund reserve average is 42.8%, Black Hawk has the lowest level of fund reserves at 23.8 percent. This is a clear indication that the budget is in dire striates (See, County Ex. B-28 & 29).

One Arbitrator found the situation to be especially compelling:

> On balance, however, the County's financial situation, both in terms of its general basic fund increase for 2003-2004 versus that of the other counties compared and in terms of the small amount of that increase from which the majority of this bargaining unit's salaries must be paid, seems to be the more compelling factor.

Arbitration Between Black Hawk County & PPME (Benz, 2003) at 19.

d. Conclusion. For the above reasons, I award an across-the-board increase of 2.25% for the successor collective bargaining agreement.

2. <u>Insurance</u>

County Position:	**Employee Contribution/Deductible/OPM**	
	Single:	**35.00**
	Family:	**75.00**
	Single:	**500 deductible**
	Family:	**1,000 deductible**
	Single:	**1,000 out-of-pocket maximum**
	Family:	**2,500 out-of-pocket maximum**
Union Position:	**Employee Contribution/Deductible**	
	Single:	**25.00**
	Family:	**50.00**
	Single:	**250 deductible**
	Family:	**500 deductible**
	Single:	**750 out-of-pocket maximum**
	Family	**1,500 out-of-pocket maximum**

The Union's proposal is that the employee contribution and plan design remain current contract with the exception of office visit and a 90-day mail-order prescription plan (Er. I-3).

In 1998 employees contributed nothing to the cost of health insurance. In 1999 a small contribution was started at the $5.00/12.50 level. However, this small contribution apparently did nothing to temper the escalating cost of insurance. Premiums increased from $158/$387 in 1998 to 340.00/850 for this year, or plus 115.2% single/119.6% family. The County absorbed all of this cost increase except for an additional small $50.00 increase in employee contribution for 2004 and $15/$37.50 last year. According to Management, it is long overdue that the employee contribution be increased to a more meaningful level (County Ex. IN-6). Indeed, the amount contributed by employees in Unit #8 has not increased meaningfully since contributions were first agreed to while premiums have significantly increased (approximately 20 percent).

Significant here is an examination of internal settlements on wages and insurance:

	Wages	Insurance/ Single	Family	Recent Settlements
Unit 2 – Nursing	2.25% wages	25.00	75.00	+25.00
Unit 1 – Clerical	2.25% wages	25.00	75.00	+25.00
Unit 3 – Maintenance (Arb award)	2.25% wages	25.00	75.00	+25.00
Unit 4 – Secondary Roads	2.25% wages	35.00	75.00	+25.00
	2.75% second yr	50.00	100.00	
Unit 5 – Sheriff Factfinding Award/settled	2.25%	25.00	75.00	+25.00
Unit 6 – Attorney	3.5% (last of 3 year 0.0/0.0/3.5% – average 1.17%)	20.00	50.00	
Unit 7 – Conservation	2.35% wages	45.00	70.00	+20.00
Unit 8 – Health Non-Bargaining	1.50% – 2.5%	25.00	50.00	

There is no question that Black Hawk County has one of the most generous health insurance programs both in the State of Iowa and, also, relative to other large cities in America. There is also no serious dispute that with insurance costs increasing at exponential rates, private and public sector employers are seeking to shift some of the burden to employees. Gone are the days where employers pay the "full boat" of insurance costs.

What is significant here is that all of the units with settlements have increased their contributions toward the cost of health insurance. To this end, all units open for negotiations this year are settled for next year with two units at $35.00 for single and five units at $75.00 for family. The Roads and Sheriffs Units are at $35.00/75.00 for the first year and $50.00/1,000.00 for the second year. The County Attorneys who have a multi-year collective bargaining agreement are at

$20.00/50.00. Unit #7 has a multi-year settlement which included the 2005-06 year at $45.00 single and $70.00 family. The non-bargaining unit employees are at $50.00/150.00. The factfinder that heard the deputy sheriff case awarded 25.00/75.00, as did the factfinder and Arbitrator for Unit #3. The Deputy Sheriffs have since voluntarily settled.

Given that the eight units settle at the same or similar levels ("pattern bargaining"), the trends (including insurance deductibles) favors the Administration's position (County Ex. IN-11). Indeed, the Union's position would have the health employees contributing far less that the other county employees, contrary to the settlement trend and in a percentage amount that is less than they contributed this year (County Ex. INS-4 & 5).

My award is the following "mix" between the Association's and Administration's proposal:

Employee Contribution/Deductible/OPM

Single:	**25.00**
Family:	**75.00**
Single:	**500 deductible**
Family:	**1,000 deductible**
Single:	**1,000 out-of-pocket maximum**
Family:	**2,500 out-of-pocket maximum**

3. <u>Other Issues: Waterloo School Nurses' Addendum</u>

The Union proposes the following language:

4. Waterloo Schools Nursing Addendum: The Union proposes that the benefits package for Waterloo Schools Nursing contract will remain as found in the 2001-2004 contract.

a. History/Background. Since July 1, 1996, the Black Hawk Public Health Department has a contract with the Waterloo Community School District to provide school nurses and health aides for the District. Black Hawk County Public Health is the only public health organization in Iowa to provide nursing services for a school district.

There are currently four full-time school nurses that attend to student health care needs at the 22 attendance centers at Waterloo Schools. These positions work 40 hours/week and approximately 10 months/year. These four positions are at the center of this dispute.

There are also a number of School Health Aides that receive the common part-time benefits provided by the Public Health/AFSCME collective bargaining agreement. There has never been a dispute over their benefits. The instant dispute concerns the benefits the four positions receive under the labor agreement.

By way of background, at the time the service was contracted out to Public Health, the school nurses were a part of the Waterloo Education collective bargaining agreement. The Union was contacted by then personnel director Tom Pounds to meet with AFSCME Local 679 in the summer of 1996 to make alterations to the union contract to accommodate the new work to be performed. John McNamee and Tom Anthony represented the Union in this matter. Due to the short notice and the need to get something in place prior to the start of the 1996/97 school year, an addendum was negotiated to cover the specific benefits that the employees would receive.

In the negotiations that led to the 2001-2004 collective bargaining agreement, an addendum was voluntarily agreed to. The benefits and wages were greatly improved over what had been in the contract addendum.

In the 2001-2004 addendum, the school nurses received a package that reflected what a full-time public health nurse working for this Employer would receive, *minus two months salary and benefits.*

After completion of negotiations in the late winter/early spring of 2001, AFSCME Staff Representative Tom Anthony was assigned to the Cedar Rapids/Iowa City AFSCME locals. Kristi Cave took over fo all Waterloo/Cedar Falls locations.

b. Failure to Achieve a Meeting of the Minds in Bargaining for the 2004-2005 Collective Bargaining Agreement. The Association notes that in the negotiations that led to the current 2004-2005 collective bargaining agreement, the Employer proposed to eliminate the WCS Nursing addendum and place them into the contract. The Union bargaining team as a whole interpreted that to mean that there would be no changes in the nurses' benefits. When the Union met to ratify the voluntary settlement, the question was posed by the nurses as to the changes in benefits. Union President Jon McNamee and AFSCME Staff Representative Kristi Cave told the entire group that as they read point #18 of the ratification document there would be no change in benefits. Further, when the draft copy of the new agreement was sent to McNamee and Cave for proof-reading and signing, it was apparent that the WCS Nursing benefits were not placed in the body of the new contract. McNamee and Cave had meetings and conversations with the Director over the issue. Both McNamee and Cave refused to sign the contract.

As time went on during the fall of 2004, the Union did not take action on this dispute. The current negotiations were started between the parties for the July 1, 2005 contract. As a result of the inaction of the parties to resolve this dispute, three of the four school nurses filed a Prohibited Practice complaint against the parties. In response to the complaint, Statewide President January Corderman instructed Tom Anthony to assist in the matter. On February 10, 2005, the Union

submitted a bargaining proposal to reinstate the 2001-2004 School Nursing Addendum.. Between February 10th and the next mediation session of February 22, 2005, the Union filed a grievance alleging a continuing violation by unilaterally reducing the School Nurses benefits for the current contract.

c. The Union's Position. The Union asserts ratification point #18 is written clearly and initiated by the parties. It does not mention deleting, reducing, or changing and School Nurses benefit whatsoever. The Union, through its agents, was actively trying to resolve the matter through conversations with the Employer throughout the fall. The grievance alleging a continuing violation of the collective bargaining agreement is a valid response to the employees' prohibited practice complaint.

The Union asks the Arbitrator to restore the addendum to what it was during the 2001-2004 agreement for the nurses assigned to the school district. It was bargained as a full-time package that a Black Hawk Nurse would receive, minus two months because of the school calendar summer vacation.

d. The Employer's Position. The Administration asserts the Union knew what point #18 meant (the Addendum) when it had the ratification meeting for the July 1, 2004 through June 30, 2005 collective bargaining agreement. The Addendum should not be placed back into the collective bargaining agreement, in the Administration's view. To this end the Employer advances the following points:

First, the Employer asserts that the Union's grievance and the PPC by the three nurses are both untimely as being violative of both contractual and statutory limitation periods.

Second, the Addendum, as written, is inappropriate under the statute. It includes many mandatory topics. In the Employer's view, there is no topic called "benefits." If the Addendum were placed in the collective bargaining agreement, it would be part of the Union's wage and other proposals. When the Union opened up bargaining it did not include the topics contained in the Addendum. Moreover, there has been no bargaining over this issue, at least in Management's eyes. Clear and simple, it would be illegal for the Arbitrator to award the Addendum as it is written.

Third, on an equity basis, there is no reason to award such a benefit. On the merits, all persons at the bargaining table would testify that it was the County's position to take the Addendum out of the contract. In Management's view, the nurses received a special benefit, and the nurses understood this to be the case.

Fourth, what happened at the ratification meeting is not the business of Management. The notes of those in attendance indicate the employees knew the Addendum would not be included in the parties' collective bargaining agreement. The intent of the parties was to include the nurses and treat them as the home care aids, an equitable resolution to the problem facing the parties.

* * *

On a procedural basis, I rule for the Administration. Its point is well taken regarding how the proposal, as currently written, would "fit" into the various categories (wages, longevity, vacation, etc.).

Even if the procedural issue could be resolved in the Association's favor,[11] I believe the Administration advances the better case regarding the merits. At bargaining, the idea was for the nurses to be included under the regular collective bargaining agreement and be treated as the home-care aides were treated. All work less than full time (the nurses at .85 time) and, thus, should be treated the same as similarly-situated employees (the range was .5 to .9).[12]

[11] Here it has to be remembered the parties effectively adopted their own impasse procedure, electing to forgo the statutory scheme.

[12] One remaining problem for the parties is this – My ruling goes only to the successor collective bargaining agreement. That is, I hold that the Addendum, as written by the Association, is not to be included in the new contract. I am not ruling on the grievance filed by AFSCME or the PPC complaint that has been filed by the three nurses, Shane Bohlmann, Ann Bostwick, and Karen Woltz. As the parties know, I have absolutely no jurisdiction over the complaint before PERB (which, in the end, may be untimely). Moreover, the grievance, filed on 2-4-05, is not an interest proceeding (that, too, may indeed be untimely).

V. AWARD

A. Wages. The successor collective bargaining agreement should include an across-the-board increase of 2.25% for the unit employees.

B. Insurance. The following proposal is awarded:

Employee Contribution/Deductible/OPM

Single:	**25.00**
Family:	**75.00**
Single:	**500 deductible**
Family:	**1,000 deductible**
Single:	***1,000 out-of-pocket maximum***
Family:	**2,500 out-of-pocket maximum**

C. Other Issues. The Administration's proposal on the Nurses' Addendum issue is accepted. The Addendum is not to be included in the successor collective bargaining agreement.

Respectfully submitted, and
dated this 27th day of June,
2005, DeKalb, IL.

Marvin F. Hill, Jr.,
Arbitrator

I certify that on I served the foregoing arbitration decision upon each on the parties' representatives by personally mailing a copy to them at their respective addresses noted in the Appearance section of this award. I further certify that on, I personally mailed a copy to Sue Bolte of the Iowa Public Employment Relations Board (PERB), 510 East 12th Street, Ste 1B, Des Moines, IA, 50319.

Marvin F. Hill, Jr.
Arbitrator